

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING CERTAIN §
RULES OF THE DELAWARE LAWYERS' §
RULES OF PROFESSIONAL CONDUCT §
AND OF THE LAWYERS' FUND FOR §
CLIENT PROTECTION PERTAINING TO §
LAWYER BANK ACCOUNTS §

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS**, and **RIDGELY**,
Justices, constituting the Court *en Banc*.

ORDER

This 20th day of October, 2008, it appears to the Court that it is desirable to
amend certain rules and requirements pertaining to lawyer bank accounts.

NOW, THEREFORE, IT IS ORDERED that the following changes shall
become effective January 1, 2009:

(1) Rule 1.15(a) of the Delaware Lawyers' Rules of Professional Conduct
("DLRPC") is hereby amended by deleting the second sentence and substituting the
following in lieu thereof: "Funds shall be kept in a separate account designated solely
for funds held in connection with the practice of law in this jurisdiction. Such funds
shall be maintained in the state in which the lawyer's office is situated, or elsewhere
with the consent of the client or third person."

(2) Rule 1.15(d) of the DLRPC is hereby amended by deleting the first
sentence of the present rule and substituting the following in lieu thereof: "A lawyer
engaged in the private practice of law in this jurisdiction, whether in an office situated

in this jurisdiction or otherwise, must maintain on a current basis financial books and records relating to such practice, and shall preserve the books and records for at least five years following the completion of the year to which they relate, or, as to fiduciary books and records, five years following the completion of that fiduciary obligation.”

(3) Rule 1.15(d) of the DLRPC is hereby amended by deleting subsection (1) of the present rule and substituting the following in lieu thereof: “All bank statements, cancelled checks (or images and/or copies thereof as provided by the bank), and duplicate deposit slips relating to fiduciary and non-fiduciary accounts must be preserved.”

(4) Rule 1.15(d) of the DLRPC is hereby amended by deleting subsection (2) of the present rule and substituting the following in lieu thereof: “Bank accounts maintained for fiduciary funds must be specifically designated as ‘Rule 1.15A Attorney Trust Account’ or ‘1.15A Trust Account’ or ‘Rule 1.15A Attorney Escrow Account’ or ‘1.15A Escrow Account,’ and must be used only for funds held in a fiduciary capacity. A designation of the account as a ‘Rule 1.15A Attorney Trust Account’ or ‘1.15A Trust Account’ or ‘Rule 1.15A Attorney Escrow Account’ or ‘1.15A Escrow Account,’ must appear in the account title on the bank statement. Other related statements, checks, deposit slips, and other documents maintained for fiduciary funds, must contain, at a minimum, a designation of the account as ‘Attorney

Trust Account’ or ‘Attorney Escrow Account.’”

(5) Rule 1.15(d)(9) of the DLRPC is hereby amended by redesignating subsection (G) of the present rule as subsection (H), and adding a new subsection (G) as follows: “No funds which should have been disbursed shall remain in the account, including, but not limited to, earned legal fees, which must be transferred to the lawyer’s non-fiduciary account on a prompt and timely basis when earned.”

(6) Rule 1.15(d) of the DLRPC is hereby amended by deleting subsection (10) of the present rule and substituting the following in lieu thereof: “If a lawyer maintains financial books and records using a computer system, the lawyer must cause to be printed each month a hard copy of all monthly journals, ledgers, reports, and reconciliations, and/or cause to be created each month an electronic backup of these documents to be stored in such a manner as to make them accessible for review by the lawyer and/or the auditor for the Lawyers’ Fund for Client Protection.”

(7) Rule 1.15(m) of the DLRPC is hereby deleted, and Rule 1.15(n) of the present rule is hereby redesignated as Rule 1.15(m).

(8) Rule 1.15(m) of the DLRPC, as redesignated herein, is hereby amended by deleting the first sentence of the present rule, and substituting the following in lieu thereof: “A lawyer shall not disburse fiduciary funds from a bank account unless the funds deposited in the lawyer’s fiduciary account to be disbursed, or the funds which

are in the lawyer's unrestricted possession and control and are or will be timely deposited, are good funds as hereinafter defined."

(9) Comment [5] to Rule 1.15 of the DLRPC is hereby amended by deleting the first sentence of the present Comment [5], and substituting the following in lieu thereof: "The extensive provisions contained in Rule 1.15(d) represent the financial recordkeeping requirements that lawyers must follow when engaged in the private practice of law in this jurisdiction."

(10) Comment [7] to Rule 1.15 of the DLRPC is hereby amended by deleting the word "Delaware" in its first sentence.

(11) Comment [8] to Rule 1.15 of the DLRPC is hereby amended by deleting the word "Delaware" in its first sentence.

(12) Rule 1.15A of the DLRPC is hereby amended by redesignating subsection (h) of the present rule as subsection (a), and redesignating subsections (a), (b), (c), (d), (e), (f), and (g) of the present rule as subsections (b), (c), (d), (e), (f), (g), and (h), respectively.

(13) Rule 1.15A(a) of the DLRPC, as redesignated herein, is hereby amended by deleting the present rule and substituting the following in lieu thereof: "Every attorney practicing or admitted to practice in this jurisdiction shall designate every account into which attorney trust or escrow funds are deposited either as 'Rule 1.15A

Attorney Trust Account’ or ‘1.15A Trust Account’ or ‘Rule 1.15A Attorney Escrow Account’ or ‘1.15A Escrow Account,’ pursuant to Rule 1.15(d)(2).”

(14) Rule 1.15A(b) of the DLRPC, as redesignated herein, is hereby amended by deleting its first sentence and substituting the following in lieu thereof: “Bank accounts designated as ‘Rule 1.15A Attorney Trust Account’ or ‘1.15A Trust Account’ or ‘Rule 1.15A Attorney Escrow Account’ or ‘1.15A Escrow Account,’ pursuant to Rule 1.15(d)(2) shall be maintained only in financial institutions approved by the Lawyers’ Fund for Client Protection (the “Fund”).”

(15) The title of the “Rules of the Trustees of the Lawyers’ Fund for Client Protection of the Bar of Delaware” is hereby amended by deleting the title in its entirety, and substituting the following in lieu thereof: “Rules of the Trustees of the Lawyers’ Fund for Client Protection of the Supreme Court of Delaware.”

(16) General Audit Objective 2 of Rule 11 of the Rules of the Trustees of the Lawyers’ Fund for Client Protection of the Supreme Court of Delaware (“RTLFCP”) is hereby amended by deleting the first sentence of the present language and substituting the following in lieu thereof: “Verify that all bank accounts (both fiduciary and non-fiduciary) are listed on the ANNUAL REGISTRATION STATEMENT, and that all bank accounts for funds held in connection with the practice of law in Delaware are used solely for that purpose.”

(17) General Audit Objectives 2a and 2b of Rule 11 of the RLFCP are hereby amended by redesignating them as Audit Objectives 2b and 2c, respectively, and adding a new Audit Objective 2a as follows: “Obtain and attach to the audit report a copy of the first page of the latest bank statement for each bank account which the attorney or a member of the law firm has power to control, draw on or deposit in (including not only open accounts, but also any accounts open at any time during the prior calendar year).”

(18) General Audit Objective 2b of Rule 11 of the Rules of the RLFCP, as redesignated herein, is hereby amended by deleting the first sentence of the present rule and substituting the following in lieu thereof: “If any bank accounts which the attorney or a member of the law firm has power to control, draw on or deposit in (including not only open accounts, but also any accounts open at any time during the prior calendar year) is not listed, note here the omitted bank account information requested on the ANNUAL REGISTRATION STATEMENT.”

(19) General Audit Objective 2c of Rule 11 of the RLFCP, as redesignated herein, is hereby amended by deleting its present language and substituting the following in lieu thereof: “If a bank account, maintained in connection with the practice of law in Delaware, is located outside the State of Delaware, note here and indicate purpose.”

(20) General Audit Objective 2 of Rule 11 of the RLFCP is hereby amended by adding a new subsection 2d, as follows: “If a bank account, maintained in connection with the practice of law in Delaware, also contains funds for the practice of law in another jurisdiction, note here and indicate purpose.”

(21) Non-Fiduciary Funds Audit Objective A2(1)a of Rule 11 of the RLFCP is hereby amended by deleting the present language and substituting the following in lieu thereof: “Bank statements, deposit tickets, and cancelled checks (or images and/or copies thereof as provided by the bank).”

(22) Fiduciary Funds Audit Objective B2(1)a of Rule 11 of the RLFCP is hereby amended by deleting the present language and substituting the following in lieu thereof: “Bank statements, deposit tickets, and cancelled checks (or images and/or copies thereof as provided by the bank).”

(23) Fiduciary Funds Audit Objective B1(14)c of Rule 11 of the RLFCP is hereby amended by deleting the present language and substituting the following in lieu thereof: “Examine cancelled checks (or images and/or copies thereof as provided by the bank) to verify disbursements.”

(24) Real Estate Funds Audit Objective B2(1)(a) of Rule 11 of the RLFCP is hereby amended by deleting the present language and substituting the following in lieu thereof: “Bank statements, deposit tickets, and cancelled checks (or images

and/or copies thereof as provided by the bank).”

(25) The Clerk of this Court is directed to transmit forthwith a certified copy of this Order to the clerk of each trial court in each county.

BY THE COURT:

/s/ Randy J. Holland
Justice